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DATO' SERI ANWAR IBRAHIM

v.

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HIGH COURT MALAYA, KUALA LUMPUR
KAMARDIN HASHIM J
[CRIMINAL APPLICATION NO: 44-158-09-2012]
18 JANUARY 2013

C ***CONSTITUTIONAL LAW:*** *Fundamental liberties - Freedom of assembly - Applicant charged under Peaceful Assembly Act 2012 - Charges related to street protest - Article 10(1)(b) Federal Constitution guaranteed freedom of assembly peaceably without arms - Whether provisions under s. 4(1)(c) and s. 4(2)(c) Peaceful Assembly Act 2012* D *contravenes art. 10(1)(b) Federal Constitution - Whether freedom of assembly an absolute right*

The applicant was an elected Member of Parliament and was charged before the Sessions Court with two others for an offence E committed under the Peaceful Assembly Act 2012 ('the Act'). The charges were in relation to street protest which was prohibited under the Act. *Vide* this application, the applicant posed the following question for this court's determination, *ie*, whether the provisions under ss. 4(1)(c) and 4(2)(c) of the Act were F inconsistent and in contravention with the provisions of art. 10(1)(b) of the Federal Constitution ('Constitution'), which guarantees the freedom of an assembly peaceably without arms, and were therefore void pursuant to art. 4(1) thereof.

Held (answering question posed in negative):

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(1) Sections 4(1)(c) and 4(2)(c) of the Act provides that street protest is not permitted. A person commits an offence if he or she organises or participates in street protest. Street protest has been defined under the Act to mean "an open air H assembly which begins with a meeting at a specified place and consists of walking in a mass march or rally for the purpose of objecting to or advancing a particular cause or causes". (paras 9 & 10)

I **(2)** The objective of the Act is to ensure that all citizens have the right to organise assemblies or to participate in assemblies peaceably and without arms. However, that right is subjected to the interest of the security of the Federation or any part

thereof or of public order which includes the protection of the rights and freedoms of other person. Further, by virtue of art. 10(1)(b) of the Constitution, the freedom of assembly is not an absolute right. (paras 4 & 7)

(3) The Parliament, in exercising powers conferred to it under art. 10(2)(b) of the Federal Constitution prohibits street protest. The prohibition imposed by the Parliament is reasonable in view of, *inter alia*, maintaining public order. This court took judicial notice that by having or allowing street protest, it would transgress the rights and freedom of other persons as defined under s. 3 of the Act which include, *inter alia*, the right to freedom of movement and the right to carry on business. (para 15)

(4) Sections 4(1)(c) and 4(2)(c) of the Act 2012 neither violate nor contravene art. 10(1)(b) of the Constitution and therefore, were not null and void under art. 4(1) thereof. (para 16)

Case(s) referred to:

Re Application of Tan Boon Liat @ Allen; Tan Boon Liat v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors [1976] 1 LNS 126 HC ***(refd)***

Legislation referred to:

Federal Constitution, arts. 4(1), 10(1)(b), (2)(b)
Peaceful Assembly Act 2012, ss. 3, 4(1)(c), (2)(c)

For the applicant - Karpal Singh (Ram Karpal Singh & Zaleha Sikkander Hayat with him); M/s Karpal Singh & Co
For the respondent - Abdul Wahab Mohamed (Mohamad Hanafiah Zakaria, Ishak Mohd Yusof & Mohd Farizal with him); DPPs

Reported by Kumitha Abd Majid

JUDGMENT

Kamardin Hashim J:

[1] The applicant, an elected Member of Parliament for the constituency of Permatang Pauh, together with two others was charged before the Sessions Court with two counts of offences under the Peaceful Assembly Act 2012 (Act 736). All of them pleaded not guilty to both of the charges. Both charges relates to street protest which was prohibited under the Act.

[2] By this application, the applicant posed a question for this court's determination as to the effect of a provision under s. 4(1)(c) and s. 4(2)(c) of the Act which prohibit street protest in light of art. 10(1)(b) of the Federal Constitution which guaranteed freedom of an assembly peaceably and without arms.

[3] The question posed to this court is:

> Whether the provisions of section 4(1)(c) and 4(2)(c) of the Peaceful Assembly Act 2012 are inconsistent with, and contravene, the provisions of Article 10(1)(b) of the Federal Constitution and are, therefore, void pursuant to Article 4(1) thereof.

[4] Article 10(1)(b) of the Federal Constitution confers right of an assembly peaceably without arms but subject to restrictions necessary or expedient in the interest of the security of the Federation or any part thereof or of public order. In other words, that freedom of assembly is not an absolute right. Article 10 reads as follows:

> 10. Freedom of speech, assembly and association
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> (1) Subject to Clause (2), (3) and (4):
>
> (a) Every citizen has the right to freedom of speech and expression;
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> (b) All citizens have the right to assemble peaceably and without arms; and
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> (c) All citizens have the right to form associations.
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> (2) Parliament may by law impose:
>
> (a) On the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence;
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> (b) On the right conferred by paragraph (b) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof or public order;

(c) On the right conferred by paragraph (c) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, public order or morality.

(3) Restrictions on the right to form associations conferred by paragraph (c) of Clause (1) may also be imposed by any law relating to labour or education.

(4) In imposing restrictions in the interest of the security of the Federation or any part thereof or public order under Clause (2)(a), Parliament may pass law prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III, Article 152, 153 or 181 otherwise than in relation to the implementation thereof as may be specified in such law.

[5] Whereas, art. 4(1) thereof provides that the Federal Constitution is the supreme law of Malaysia and any laws passed after 31 August 1957 (Merdeka Day) which is inconsistent with the Federal Constitution shall, to the extent of the inconsistency, be void. But, the validity of any laws shall not be questioned on the ground that, *inter alia*, it imposes such restrictions as are mentioned in art. 10(2) thereof.

[6] Peaceful Assembly Act 2012 (Act 736) was enacted by Parliament by virtue of art. 10(2)(b), to impose certain restrictions on the right to assemble peaceably and without arms, as its deems necessary or expedient in the interest of the security of the Federation or any part thereof or of public order.

[7] The object of this Act 736 is to ensure that all citizens have the right to organise assemblies or to participate in assemblies peaceably and without arms. However that right is subjected to the interest of the security of the Federation or any part thereof or of public order which includes the protection of the rights and freedoms of other person.

[8] Abdoolcader J in *Re Application of Tan Boon Liat @ Allen; Tan Boon Liat v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors* [1976] 1 LNS 126 said:

> The expression "public order" is not defined anywhere but danger to human life and safety and the disturbance of public tranquility must necessarily fall within the purview of the expression. It is used in a generic sense and is not necessarily antithetical to disorder, and is wide enough to include considerations of public safety within its signification.

[9] Sections 4(1)(c) and 4(2)(c) of the Act which the applicant took objection to it and under which the applicant with two others stand charged at the lower court, provides that street protest is not permitted under the Act. A person commits an offence if he or she organises or participates in street protest. The penalty provided on conviction, be liable to a fine not exceeding ten thousand ringgit.

[10] Street protest had been defined under the Act to mean "an open air assembly which begins with a meeting at a specified place and consists of walking in a mass march or rally for the purpose of objecting to or advancing a particular cause or causes".

[11] According to *Legal Definition: Street Protest Law & Legal Definition of USA*, a street protest is "an action by a group of people to show their negative or positive viewpoint regarding a public issue. Usually, a street protest is carried out in relation to a perceived grievance or social injustice. It ordinarily consists of walking in a mass march formation and either beginning with or meeting at a designated endpoint, or rally, to hear speakers. Street protest can be either non-violent or violent, or it can begin as non-violent and turn violent depending on circumstances. A street protest can be carried out in several forms such as marches, nudity, either threatened or carried out; rallies in which people gather to listen to speakers or musicians, picketing and sit-ins. Actions such as blockades are also considered as street protest. It is also called as a demonstration". Street protest in another word is "demonstrasi jalanan".

[12] The applicant holds the view that, as contains in his affidavit affirmed on 3 September 2012 at paras. 6 and 7 that street protest is a form of an assembly and Parliament in enacting provisions under ss. 4(1)(c) and 4(2)(c) of the Peaceful Assembly Act 2012 banning street protest was *ultra vires* art. 10(2)(b) of the Federal Constitution. It is applicant's contention that ss. 4(1)(c) and 4(2)(c) thereof is null and void and of no effect. The applicant therefore urged the court to set aside the two charges labeled at him and the two others.

[13] I have heard submissions from both parties cited herein and I am of the view that Parliament had an extensive and valid power to regulate human rights such as right to organise and participate in a peaceful assembly without arms and at the same time to impose certain restrictions as its deems necessary or expedient in the interest of the security of the Federation or any part thereof

or of public order as envisaged under cl. (2)(b) of art. 10 of the Federal Constitution. Parliament in enacting the impugned provisions banning street protest is within the ambit of powers conferred to it under that cl. (2)(b) of art. 10 thereof.

[14] I believe that street protest or demonstration as its normally known is also not allowed in other jurisdiction. Banning street protest as one of the form of peaceful assembly without arms is necessary in a democratic society for the protection of morals and the rights and freedom of others. Even civic experience has shown that rights cannot be absolute because they have to balance against one another. This process of balancing against one another, entails as of necessity, placing limits on the extent to which these rights are enjoyed.

[15] The Parliament in exercising powers conferred to it under art. 10(2)(b) prohibits street protest. I found that the prohibition impose by Parliament is reasonable in view for the protection of the interest of the security of the nation and for maintaining of public order. This court take judicial notice that by having or allowing street protest it will transgress the rights and freedom of other persons which is defined under s. 3 of the Act which includes:

(a) The right to peaceful enjoyment of one's possession;

(b) The right to freedom of movement;

(c) The right to enjoy the natural environment; and

(d) The right to carry on business.

[16] After careful considerations of what had been said and submitted by both sides, I hold the view that ss. 4(1)(c) and 4(2)(c) of the Peaceful Assembly Act 2012 neither violate nor contravenes art. 10(1)(b) of the Federal Constitution and therefore are not null and void under art. 4(1) thereof.

[17] Accordingly, based on the aforementioned reasons, my answer to the question posed is in the negative.